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FILED/ACCEPTED

October 4, 2011

OCT - 4 2011

Via ECFS

Federal Communications Commission  
 Office of the Secretary

Ms. Marlene H. Dortch  
 Secretary  
 Federal Communications Commission  
 445 12th Street, S.W.  
 Room TW-A325  
 Washington, D.C. 20554

**Re: Notice of Ex Parte Communication, WC Docket 10-90, GN Docket 09-51,  
 WC Docket 07-135, WC Docket 05-337, CC Docket 01-92, CC Docket 96-45,  
 WC Docket 03-109**

Dear Ms. Dortch:

On October 3, 2011, John Harrington, Senior Vice President – Regulatory & Litigation of Neutral Tandem, Inc. ("Neutral Tandem"), and the undersigned, outside counsel to Neutral Tandem, met with Victoria Goldberg, Rebekah Goodheart, Travis Litman, Jennifer Prime and Randy Clarke of the Wireline Competition Bureau and Zachary Katz, senior counsel to the Chairman; and separately with Angela Kronenburg, legal adviser to Commissioner Clyburn, to discuss the above-referenced proceedings. Under separate cover and in accordance with the Protective Order in this proceeding,<sup>1</sup> copies of the confidential materials are being filed with the Secretary's Office and are being provided to Lynne Hewitt Engledow of the Wireline Competition Bureau.

In the meeting, Neutral Tandem presented and discussed the attached written materials. Neutral Tandem also made reference to its written *ex parte* presentation submitted electronically in the above-referenced dockets on September 30, 2011. Neutral Tandem emphasized that the record in this proceeding demonstrates the existence of robust competition in the market for tandem transit services. Neutral Tandem has attached copies of declarations it has submitted in this proceeding to this submission.

Neutral Tandem further emphasized that the Commission should not find tandem transit service to be a form of "interconnection" under Section 251(c)(2) of the Telecommunications Act of 1996, as such a finding would be inconsistent not only with

<sup>1</sup> *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, WC Docket Nos. 07-135, 10-90, 05-337, and GN Docket No. 09-51, Protective Order, DA 10-1749 (WCB, rel. Sept. 16, 2010).

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the Commission's rules, but also with the Supreme Court's decision from earlier this year in *Talk America, Inc. v. Michigan Bell Tel. Co.*, 131 S.Ct. 2254 (2011).

Neutral Tandem encouraged the Commission to determine that the market for tandem transit services is competitive and to reject the requests made by various carriers to impose TELRIC-based pricing on incumbent carriers' tandem transit service.

Respectfully submitted,

*/s/ electronically signed*

Russell M. Blau  
Counsel to Neutral Tandem, Inc.

Attachment

cc: (by email)

Zachary Katz  
Angela Kronenburg  
Victoria Goldberg  
Rebekah Goodheart  
Travis Litman  
Jennifer Prime  
Randy Clarke

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**FCC Presentation – October 3, 2011**



## Neutral Tandem

- Leading provider of competitive local tandem transit service between competitive (i.e., non-ILEC) carriers.
- Local tandem transit occurs “when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediate provider.” *FNPRM* ¶ 683 (Feb. 9, 2011).

## **Neutral Tandem**

- NT provides local tandem transit service in 189 of the 192 LATAs in continental United States, and in Puerto Rico.
  - Only LATAs where NT does not provide service are Fishers Island, NY, and remote parts of Navajo Nation.

## Local Tandem Transit Service

- *FNPRM* noted that “the record in this proceeding indicates that a competitive market for transit service exists.” *FNPRM* ¶ 683.
- *FNPRM* requested that parties “refresh the record with regard to the need for the Commission to regulate transiting services, and the Commission’s authority to do so.” *Id.*



# What has the Record Shown?

- The record confirms the existence of a robust competitive market for local tandem transit.
  - Falling prices (average price decreases of ■ year-to-year between 2007-2010, including more than ■ decline between 2009 and 2010).
  - Multiple new entrants to local tandem transit market.
  - Alternatives to local tandem transit, such as carriers choosing to bypass tandem providers and direct connect their networks, are widely utilized.
- Carriers seeking TELRIC regulation of ILEC transit have not provided any data establishing absence of competitive options.

# Federal Court Litigation

- Federal district courts have reached different results regarding transit.
  - First district court to address issue found TELRIC pricing not required for local transit. (Puerto Rico)
  - Two district courts have since affirmed state commission decisions requiring ILEC to provide local transit at TELRIC rates. (Nebraska, Connecticut).
- Connecticut court decision on appeal to Second Circuit.
  - State commission ignored substantial record evidence of competitive alternatives to ILEC transit.



Before The  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Inter-carrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

**DECLARATION OF GERARD LAURAIN**

1. I am Senior Director of Marketing for Neutral Tandem, Inc. ("Neutral Tandem"). In that capacity, I am responsible for Neutral Tandem's marketing efforts with respect to local transit service. I also am familiar with the markets in which Neutral Tandem provides local transit service. The purpose of this Declaration is to provide detail concerning the markets in which Neutral Tandem provides local transit service.<sup>1</sup>

2. As of March 31, 2011, Neutral Tandem provides local transit service in 189 of the 192 LATAs in the continental United States and Puerto Rico. Neutral Tandem provides local transit service to more than 100 of the largest national and regional telecommunications carriers

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<sup>1</sup> For purposes of this Declaration, when I use the phrase "local transit service," I mean a service provided by Neutral Tandem and other intermediate carriers that allows originating and terminating carriers to exchange non-access traffic through the network of the intermediate carrier, as opposed to exchanging that traffic through direct interconnection between the originating and terminating carrier.


throughout the country. Neutral Tandem has the ability to reach more than 538,000,000 telephone number end points. A map of the markets served by Neutral Tandem as of March 31, 2011 is attached hereto as Exhibit 1.

3. The only LATAs in the continental United States in which Neutral does not provide local transit service are LATAs 921, 980, and 981.

4. LATA 921 is comprised entirely of Fishers Island, New York. According to Wikipedia, Fishers Island, New York is located approximately 11 miles off of the end of Long Island Sound, is approximately 9 miles long and 1 mile wide, and has approximately 250 full-time residents. A map of the Northeast Region LATAs downloaded from maponics.com, which shows LATA 921, is attached hereto as Exhibit 2. For reference, LATA 921 is circled by hand.

5. LATAs 980 and 981 are comprised of part of the Navajo Nation. According to Wikipedia, fewer than 175,000 persons resided on the entire Navajo Nation, which includes substantial areas in New Mexico that are not part of LATAs 980 and 981, as of 2000. A map of the Southwest Region LATAs downloaded from maponics.com, which shows LATAs 980 and 981, is attached hereto as Exhibit 3. A map of the Navajo Nation downloaded from Wikipedia, which shows that substantial parts of the Navajo Nation are not within LATAs 980 and 981, is attached hereto as Exhibit 4.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

  
Gerard Laurain

Date: 05-17-11

# **EXHIBIT 1**



make every minute count.



# Neutral Tandem Markets



The above map is current as of 3-31-11. Neutral Tandem reserves the right to change the service areas identified as 'planned for development' without notice, and is under no obligation to update this map with respect to any such changes.

Neutral Tandem, Inc. is the nation's leading provider of independent tandem services to wireless, wireline, cable and broadband service providers. Founded in 2003, the company has created the largest non-PSTN (Public Switched Telephone Network) tandem network in the U.S., facilitating inter-carrier communications with a cost-effective alternative to the Incumbent Local Exchange Carrier network. Competitive carriers have made Neutral Tandem the premier company of our kind, and the undisputed market leader. In fact, Neutral Tandem offers more interconnections—with over 538 million telephone number end points—to more carriers, in more locations than any other alternate tandem provider network. Maybe that's why Neutral Tandem is trusted by over 100 national and regional competitive carriers in the 189 markets we serve.

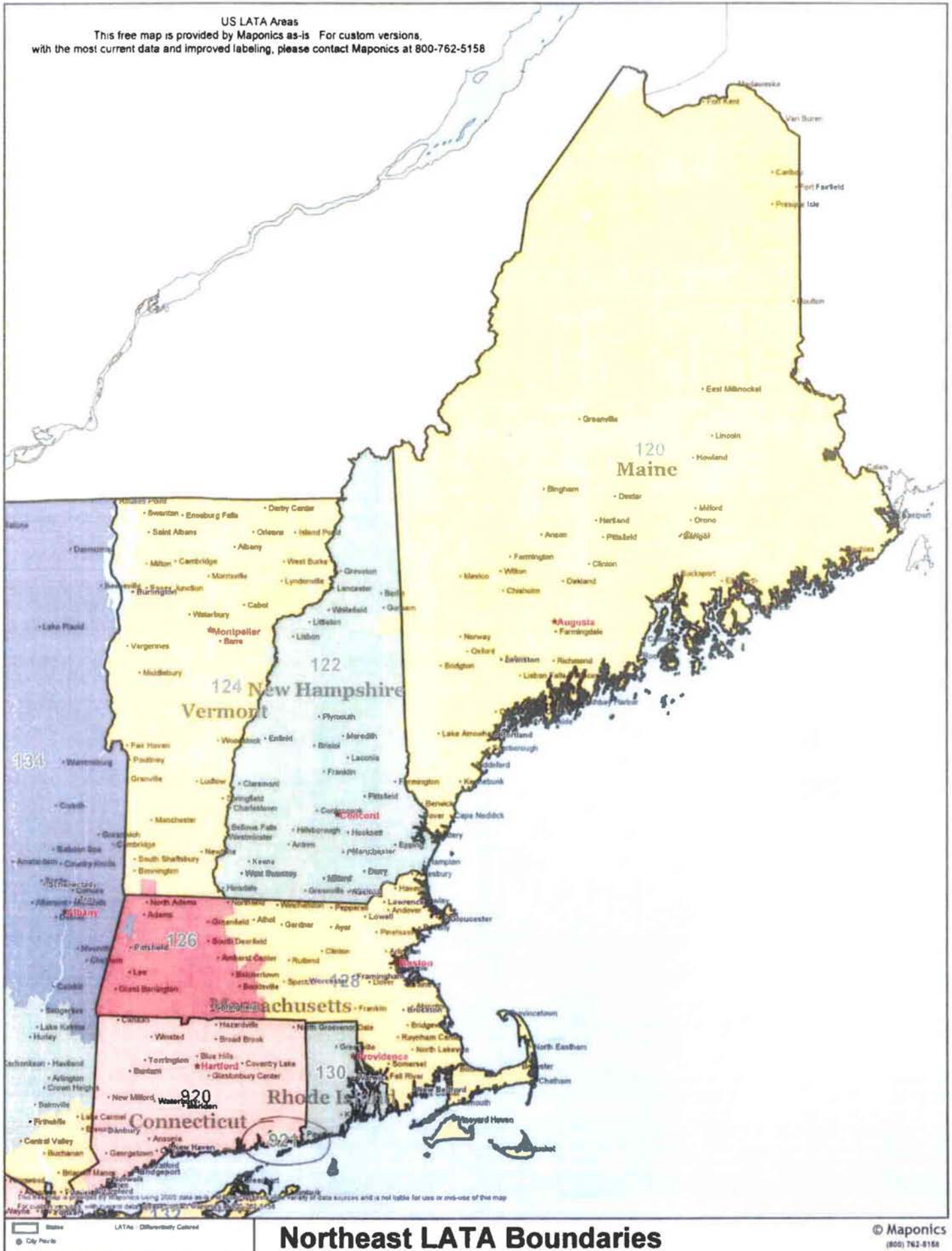
**CORPORATE HEADQUARTERS:**

550 W. Adams St. • Suite 900 • Chicago, Illinois 60661 • Phone: 312.384.8000 • Fax: 312.346.3276 • [www.neutraltandem.com](http://www.neutraltandem.com)

## **EXHIBIT 2**

# US LATA Areas

This free map is provided by Maponics as-is. For custom versions, with the most current data and improved labeling, please contact Maponics at 800-762-5158



## Northeast LATA Boundaries

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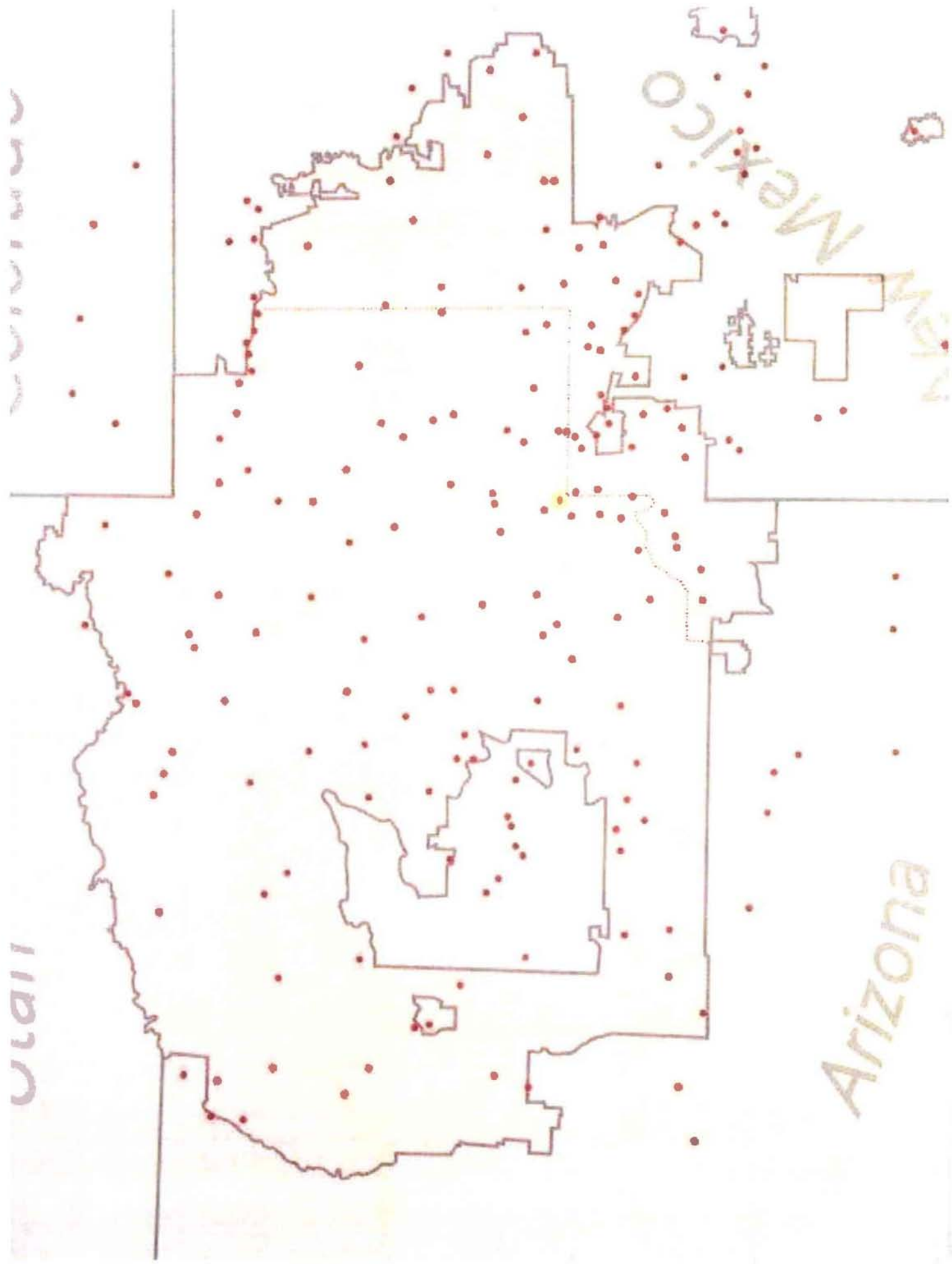


# **EXHIBIT 3**



# **EXHIBIT 4**





Before The  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
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High Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

**DECLARATION OF SURENDRA SABOO**

1. I am the President and Chief Operating Officer of Neutral Tandem, Inc. (“Neutral Tandem”). In that capacity, I am responsible for all of Neutral Tandem’s operations throughout the United States. Neutral Tandem’s sales organization in the United States reports to me. I am familiar with the markets in the United States in which Neutral Tandem provides local transit service, as well as the competitive landscape surrounding local transit service generally.<sup>1</sup>

2. I have been provided with and reviewed comments filed by Charter Communications, Inc. (“Charter”), Cbeyond Communications Company, LLC (“Cbeyond”), Integra Telecom, Inc. (“Integra”), TW Telecom Inc. (“TWT”), MetroPCS Communications, Inc.

<sup>1</sup> For purposes of this Declaration, when I use the phrase “local transit service,” I mean a service provided by Neutral Tandem and other intermediate carriers that allows originating and terminating carriers to exchange non-access traffic through the network of the intermediate carrier, as opposed to exchanging that traffic through direct interconnection between the originating and terminating carrier.

("MetroPCS"), and Cox Communications, Inc. ("Cox"). I also have been provided with and reviewed Declarations submitted in this proceeding by Greg Darnell on behalf of Cbeyond, and by Douglas K. Denney on behalf of Integra.

3. The purpose of this Declaration is to provide further detail concerning the markets in which Neutral Tandem provides local transit service, as well as the competitive landscape Neutral Tandem faces in providing local transit service.

4. This Declaration also will respond to assertions made by Mr. Darnell and Mr. Denney concerning markets in which they assert that Neutral Tandem does not provide local transit service, and costs Mr. Darnell claims that Cbeyond incurs in connection with using Neutral Tandem's local transit service. As described below, with due respect to Mr. Darnell and Mr. Denney, a number of the assertions each has made are inaccurate.

5. Finally, this Declaration will describe the local transit services that Neutral Tandem [REDACTED]. This Declaration also will describe efforts that individuals in Neutral Tandem's sales organization, all of whom report to me, [REDACTED] [REDACTED]. As described below, a number of these carriers have informed Neutral Tandem that [REDACTED] [REDACTED] [REDACTED].

**I. MARKETS WHERE NEUTRAL TANDEM PROVIDES LOCAL TRANSIT SERVICE, AND COMPETITIVE PRESSURES NEUTRAL TANDEM FACES.**

6. As described in more detail in the Declaration of Gerard Laurain, as of March 31, 2011, Neutral Tandem provides local transit service in 189 of the 192 LATAs in the continental United States and Puerto Rico.



7. As also described in more detail in Mr. Laurain's Declaration, Neutral Tandem provides local transit service to more than 100 of the largest national and regional telecommunications carriers throughout the country. Neutral Tandem has the ability to reach more than 538,000,000 telephone number end points.

8. Although Neutral Tandem was the first carrier to begin providing local transit service on a nationwide basis, Neutral Tandem faces considerable competitive pressures in the local transit market. I am aware of several carriers that compete with Neutral Tandem to provide local transit service. These carriers include Incumbent Local Exchange Carriers ("ILECs"), as well as non-ILEC providers such as Peerless Network, Hypercube, and Level 3.

9. In many instances, one or more of Neutral Tandem's customers have informed us that they have received competitive offers for local transit service from non-ILEC competing local transit providers. In many instances, these competitive pressures have forced Neutral Tandem to lower its prices for local transit service. In other instances, Neutral Tandem has lost local transit traffic to one or more of these other competing local transit providers, even after lowering its prices.

## **II. RESPONSE TO THE DECLARATIONS OF DOUGLAS DENNEY OF INTEGRA AND GREG DARNELL OF CBeyond CONCERNING NEUTRAL TANDEM'S LOCAL TRANSIT SERVICES [REDACTED]**

### **A. Response to Declaration of Douglas Denney on Behalf of Integra**

10. I have reviewed the Declaration submitted by Douglas Denney on behalf of Integra. In that Declaration, Mr. Denney asserts that Qwest charges Integra \$0.0045 per minute for local transit service. (Denney Decl. ¶ 5.) Mr. Denney acknowledges that Neutral Tandem provides local transit service in a number of Integra's markets, but he claims that "Neutral

Tandem does not offer service in Integra's small markets, such as Idaho, North Dakota, Nevada, and Montana." (*Id.* ¶ 6.)

11. Mr. Denney's assertion that Neutral Tandem does not provide service in Idaho, North Dakota, Nevada, and Montana is wrong. As shown in Attachment 1 to Mr. Laurain's Declaration, Neutral Tandem provides local transit service in each and every one of those states.

12. On a more granular level, my understanding is that Integra provides service in the following markets: Boise (planned), Brainard-Fargo, Colorado Springs, Denver, Eugene, Minneapolis, Phoenix, Portland, Rochester, St. Cloud, Sacramento, Santa Clara, Santa Rosa, Reno, Salt Lake City, Seattle, Spokane, Yakima, and Tucson. Neutral Tandem offers local transit service in each and every one of those markets.

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] I also can say that Neutral Tandem is ready, willing, and able to provide local transit service to Integra, at rates considerably beneath those charged by Qwest, in each and every market Integra serves.

14. Finally, Mr. Denney asserts that "Neutral Tandem's network does not reach all of the networks (such as rural incumbent LEC networks) to which Integra needs to route traffic." (Denney Decl. ¶ 6.) As noted above, Neutral Tandem provides service to more than 100 of the largest national and regional carriers in the United States. Although there undoubtedly are some small carriers to which Neutral Tandem is not currently connected, with one exception (Charter,

discussed in more detail below), Neutral Tandem is connected to every sizeable telecommunications carrier in the country.

15. I note that Mr. Denney does not attempt to quantify the amount of local transit traffic that Integra either is required to send through Qwest as opposed to Neutral Tandem. Given my knowledge of Neutral Tandem's termination footprint, however, I believe there is very likely only a small percentage of Integra's local transit traffic that Neutral Tandem could not deliver for Integra.

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**B. Response to Declaration of Greg Darnell on Behalf of Cbeyond**

17. I have reviewed the Declaration submitted by Greg Darnell on behalf of Cbeyond. In that Declaration, Mr. Darnell asserts that AT&T offers Cbeyond a rate of \$0.0025 per minute for local transit service. (Darnell Decl. ¶ 5.) Mr. Darnell acknowledges that Neutral Tandem provides local transit service in "certain" of Cbeyond's markets. (*Id.* ¶ 6.) Mr. Darnell does not mention the existence of any other non-ILEC provider of local transit service in any of Cbeyond's markets. (*Id.*)

18. According to Mr. Darnell's Declaration, Cbeyond provides service in: Atlanta, Boston, Chicago, Dallas/Fort Worth, Denver, Detroit, Houston, Los Angeles, Miami, Minneapolis/St. Paul, the San Francisco Bay area, Seattle, and the greater Washington, D.C.

area. (*Id.* ¶ 2.) Neutral Tandem offers local transit service in each and every one of those markets.

19. [REDACTED]

[REDACTED] I also can say that Neutral Tandem is ready, willing, and able to provide local transit service to Cbeyond, at rates considerably beneath those charged by the ILEC, in each and every market Cbeyond serves.

20. [REDACTED]

21. Mr. Darnell also asserts that “Neutral Tandem’s service does not reach all of the networks (e.g., rural incumbent LEC networks) that subtend the RBOC’s local tandem switch to which Cbeyond needs to route traffic. As such, Cbeyond must still use the RBOC’s local tandem switch in every market.” (Darnell Decl. ¶ 6.)

22. As noted above, Neutral Tandem provides service to more than 100 of the largest national and regional carriers in the United States. Although there undoubtedly are some very small carriers to which Neutral Tandem is not currently connected, with one exception (Charter,



discussed in more detail below), Neutral Tandem is connected to every sizeable telecommunications carrier in the country.

23. I note that Mr. Darnell does not attempt to quantify the amount of local transit traffic that Cbeyond is required to send through an RBOC as opposed to Neutral Tandem. Given my knowledge of Neutral Tandem's termination footprint, however, I believe there is very likely only a small percentage of Cbeyond's local transit traffic that Neutral Tandem could not deliver for Cbeyond.

24. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. Finally, Mr. Darnell asserts that "in order to make use of Neutral Tandem's limited tandem transit service, Cbeyond must incur the additional expense of disaggregating traffic and building additional facilities to reach Neutral Tandem's network." (*Id.*)

26. With due respect, that statement is not accurate. As part of the enhanced value proposition Neutral Tandem provides to its customers, Neutral Tandem covers the cost of building facilities to its customers' network. [REDACTED]

[REDACTED]